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Attorney for Third-Party Defendants
Zorall LLC, Anne Kihagi, and
Christina Mwangi

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

| | | |
|-------------------------------|---|------------------------------------|
| STARR INDEMNITY & LIABILITY |) | Case No. 3:20-cv-00959-SI |
| COMPANY, a Texas Corporation, |) | |
| |) | AMENDED ANSWER AND |
| Plaintiff, |) | AFFIRMATIVE DEFENSES BY |
| |) | THIRD PARTY DEFENDANTS |
| v. |) | ZORIAL LLC, ANNE KIHAGI AND |
| |) | CHRISTINA MWANGI TO |
| AmGUARD INSURANCE COMPANY, |) | AMGUARD INSURANCE |
| a Pennsylvania Corporation, |) | COMPANY’S THIRD-PARTY |
| |) | COMPLAINT |
| Defendants. |) | |
| |) | |
| <hr/> |) | |
| AND RELATED COUNTERCLAIM |) | |
| AND THIRD PARTY COMPLAINT |) | |

Third Party Defendants Zorall LLC (“Zorall”), Anne Kihagi (“Kihagi”) and Christina Mwangi (“Mwangi”) (collectively, “Zorall”) hereby respond to AmGUARD Insurance Company’s (“AmGUARD”) Third-Party Complaint and Counterclaim (“Third-Party Complaint”) as follows:

JURISDICTION

1. In response to Paragraph 1 of the Third-Party Complaint/Counterclaim, Zorall, admits this court has original jurisdiction under 28 U. S. C. §1332 as this is a civil action between citizens of different states in which the matter in controversy exceeds \$75,000, exclusive of costs and interest. In further response, Starr denies that its prayer for

relief is limited to the amounts set forth in Paragraph 1 of the Third-Party Complaint/Counterclaim.

INTRODUCTION

2. In response to Paragraph 2 of the Third-Party Complaint/Counterclaim (“TPC”), Zorall admits only that AmGUARD seeks to rescind the Businessowner’s Policy AmGUARD issued to the named insured Zorall LLC, policy number ZBP601626 with effective dates of July 20, 2015 to July 20, 2016 (the “AmGUARD Policy”) and further seeks a judicial determination that “no coverage exists for various underlying actions brought against Zorall LLC, Anna Kihagi and Christina Mwangi including the judgment awarded against them in the Duncan Lawsuits.” Except as expressly admitted herein, Zorall denies the remaining allegations of Paragraph 2.

3. The allegations in paragraph 3 constitute legal conclusions and therefore do not require a response. Without waiving their objections, Zorall denies the allegations contained within paragraph 3 of the TPC.

THE PARTIES

4. Zorall admits the allegations in Paragraph 4 of the TPC.

5. Zorall admits the allegations in Paragraph 5 of the TPC.

6. Zorall admits the allegations in Paragraph 6 of the TPC.

7. Zorall admits the allegations in Paragraph 7 of the TPC.

8. Zorall admits that Zorall is, and at all relevant times was, a limited liability company organized under the laws of the State of California. Zorall denies the rest of the allegations in Paragraph 8 of the TPC.

9. Zorall admits the allegations in Paragraph 9 of the TPC.

10. Zorall admits the allegations in Paragraph 10 of the TPC.

11. Zorall admits the allegations in Paragraph 11 of the TPC.

BACKGROUND FACTS

THE AMGUARD POLICY

12. The allegations in paragraph 12 constitute legal conclusions and therefore do

1
2 not require a response. Without waiving their objections, Zorall denies the allegations
3 contained within paragraph 12 of the TPC.

4 13. The allegations in paragraph 13 constitute legal conclusions and therefore do
5 not require a response. Without waiving their objections, Zorall denies the allegations
6 contained within paragraph 13 of the TPC. Further, Zorall lacks knowledge or information
7 sufficient to form a belief about the truth of the allegations in Paragraph 13, and on that basis
8 denies such allegations.

9 14. The allegations in paragraph 14 constitute legal conclusions and therefore do
10 not require a response. Without waiving their objections, Zorall admits that a
11 Businessowner's Policy, policy number Z0BP601626 to Zorall LLC for the policy period
12 of July 20, 2015 to July 20, 2016 was issued to Zorall by AmGUARD, which policy speaks
13 for itself. Zorall denies the remaining allegations contained within paragraph 14 of the
14 TPC.

15 15. Zorall admits that a Businessowner's Policy, policy number Z0BP601626 to
16 Zorall LLC for the policy period of July 20, 2015 to July 20, 2016 was issued by
17 AmGUARD to Zorall, which policy speaks for itself. Without waiving their objections,
18 Zorall denies the allegations contained within paragraph 12 of the TPC.

19 16. Zorall admits that a Businessowner's Policy, policy number Z0BP601626 to
20 Zorall LLC for the policy period of July 20, 2015 to July 20, 2016 was issued by
21 AmGUARD to Zorall, which policy speaks for itself.

22 17. Zorall admits that a Businessowner's Policy, policy number Z0BP601626 to
23 Zorall LLC for the policy period of July 20, 2015 to July 20, 2016 was issued by
24 AmGUARD to Zorall, which policy speaks for itself.

25 18. Zorall admits that a Businessowner's Policy, policy number Z0BP601626 to
26 Zorall LLC for the policy period of July 20, 2015 to July 20, 2016 was issued by
27 AmGUARD to Zorall, which policy speaks for itself.

28 **PRIOR LITIGATION INVOLVING ZORALL, KIHAGI AND MWANGI**

19. The allegations in paragraph 19 constitute legal conclusions and therefore do

1 not require a response. Without waiving the foregoing objections, Zorall admits only that
 2 Zorall LLC, as well as Anne Kihagi, are or were parties in the following lawsuits: (a)
 3 *Duncan, et al. v. Zorall, et al.*, San Francisco Superior Court, Case No. CGC 15-545655
 4 (“Duncan I”); (b) *Zorall, LLC v. Duncan, et al.*, San Francisco County Superior Court, Case
 5 No. CUD 15- 652719; (c) *City and County of San Francisco v. Anne Kihagi, et al.*, San
 6 Francisco County Superior Court, Case No. CGC 15-546152; and (d) *Reggars, et al. v. Anne*
 7 *Kihagi, et al.*, San Francisco Superior Court, case number CGC 15-546342.

8 20. Zorall admits that in the *Duncan I Action*, Zorall, Kihagi and Mwangi are
 9 parties to that lawsuit and that the pleadings, filings, trial testimony, jury findings, court
 10 rulings and judgment in that lawsuit speak for themselves. Zorall denies any allegation in
 11 Paragraph 20 that is inconsistent with the pleadings, filings, trial testimony, jury findings,
 12 court rulings and judgments in *Duncan I*. Except as expressly admitted herein, Zorall lacks
 13 knowledge or information sufficient to form a belief about the truth of the remaining
 14 allegations in Paragraph 20, and, on that basis, denies such allegations.

15 21. Zorall admits only that Zorall LLC is a party in the *Duncan I* lawsuit, and
 16 that the pleadings, filings, trial testimony, findings, court rulings and judgments in that
 17 lawsuit speak for themselves.

18 22. Zorall admits only that the San Francisco Superior Court reflects an unlawful
 19 detainer complaint was filed by Zorall LLC, on June 25, 2015, against Dale Duncan and
 20 Marta Mendoza, and that the pleadings and filings in that lawsuit speak for themselves.

21 23. Zorall admits only that Zorall LLC, Anne Kihagi and Christina Mwangi are
 22 or were parties in *City and County of San Francisco v. Anne Kihagi, et al.*, San Francisco
 23 County Superior Court, Case No. CGC 15-546152, and that the pleadings, filings, trial
 24 testimony, findings, court rulings and judgments in that lawsuit speak for themselves, and
 25 denies any allegation in Paragraph 23 that is inconsistent with the pleadings, filings, trial
 26 testimony, findings, court rulings and judgments in that lawsuit.

27 24. Zorall admits only that Zorall LLC, Anne Kihagi and Christina Mwangi are
 28 or were parties in *City and County of San Francisco v. Kihagi*, San Francisco County
 Superior Court, Case No. CGC 15-546152, and that the pleadings, filings, trial testimony,

1 findings, court rulings and judgments in that lawsuit speak for themselves.

2 25. Zorall admits only that Zorall LLC, Anne Kihagi and Christina Mwangi are
3 or were parties in *Reggars, et al. v. Anne Kihagi, et al.*, San Francisco Superior Court, case
4 number CGC 15-546342, and that the pleadings, filings, and court rulings in that lawsuit
5 speak for themselves. Zorall lacks knowledge or information sufficient to form a belief
6 about the truth of AmGUARD's belief, and on that basis denies such allegation regarding
7 AmGUARD's belief.

8 26. The allegations in paragraph 26 constitute legal conclusions and therefore do
9 not require a response. Without waiving the foregoing objections, Zorall responds: Zorall
10 denies the allegations contained within paragraph 26 of the TPC.

11 27. The allegations in paragraph 27 constitute legal conclusions and therefore do
12 not require a response. Without waiving the foregoing objections, Zorall responds: Zorall
13 lacks knowledge or information sufficient to form a belief about the truth of the allegations
14 in Paragraph 27, and on that basis denies such allegations.

15 28. The allegations in paragraph 28 constitute legal conclusions and therefore do
16 not require a response. Without waiving the foregoing objections, Zorall responds: Zorall
17 denies the allegations contained within paragraph 28 of the TPC.

18 **REPRESENTATIOIN REGARDING COMPLIANCE WITH**
19 **APPLICABLE ORDINANCE AND LAWS**

20 29. The allegations in paragraph 29 constitute legal conclusions and therefore do
21 not require a response. Without waiving the foregoing objections, Zorall responds: Zorall
22 denies the allegations contained within paragraph 29 of the TPC.

23 30. The allegations in paragraph 30 constitute legal conclusions and therefore do
24 not require a response. Without waiving the foregoing objections, Zorall responds: Zorall
25 denies the allegations contained within paragraph 30 of the TPC.

26 **REPRESENTATION REGARDING PROPERTY**
27 **MAINTENANCE AGREEMENT**

28 31. The allegations in paragraph 31 constitute legal conclusions and therefore do
not require a response. Without waiving the foregoing objections, Zorall responds: Zorall

1 denies the allegations contained within paragraph 31 of the TPC.

2 32. The allegations in paragraph 32 constitute legal conclusions and therefore do
3 not require a response. Without waiving the foregoing objections, Zori all responds: Zori all
4 denies the allegations contained within paragraph 33 of the TPC.

5 **THE UNDERLYING SMYTH LAWSUITS**

6 33. Zori all admits only that Zori all LLC, Anne Kihagi and Christina Mwangi were
7 named as parties in *Smyth, et al. v. Anne Kihagi, et al.*, San Francisco County Superior Court,
8 Case No. CGC 15-546973 (“*Smyth I*”) and that the pleadings, filings, and court rulings in
9 the *Smyth I* lawsuit speak for themselves, and denies any allegation in Paragraph 33 that is
10 inconsistent with the pleadings, filings, and court rulings in *Smyth I*.

11 34. Zori all admits only that Zori all LLC, Anne Kihagi and Christina Mwangi were
12 named as parties in *Smyth, et al. v. Anne Kihagi, et al.*, San Francisco County Superior Court,
13 Case No. CGC 15-546973 (“*Smyth I*”) and that the pleadings, filings, and court rulings in
14 the *Smyth I* lawsuit speak for themselves, and denies any allegation in Paragraph 34 that is
15 inconsistent with the pleadings, filings, and court rulings in *Smyth I*.

16 35. Zori all admits only that Zori all LLC, Anne Kihagi and Christina Mwangi were
17 named as parties in *Smyth, et al. v. Anne Kihagi, et al.*, San Francisco County Superior Court,
18 Case No. CGC 15-546973 (“*Smyth I*”) and that the pleadings, filings, and court rulings in
19 the *Smyth I* lawsuit speak for themselves, and denies any allegation in Paragraph 35 that is
20 inconsistent with the pleadings, filings, and court rulings in *Smyth I*.

21 36. Zori all admits only that the *Smyth I* and *Smyth II* lawsuits were tendered to
22 AmGUARD and that, by letter dated January 11, 2018, AmGUARD agreed to defend the
23 *Smyth I* and *Smyth II* lawsuits.

24 37. Zori all admits Star agreed to defend and paid for the attorneys’ fees and costs
25 to defend the Kihagi Defendants in the *Smyth I* and *Smyth II* lawsuits under a full and
26 complete reservation of rights and that, after placing AmGUARD on notice of the
27 AmGUARD’s opportunity to settle the *Smyth I* and *Smyth II* lawsuits, Starr funded 100% of
28 the settlement of *Smyth I* and *Smyth II* on behalf of the Kihagi Defendants.

THE UNDERLYING DUNCAN LAWSUITS

38. Zorall admits only that Duncan and Mendoza filed the *Duncan I* lawsuit against Zorall LLC, Anne Kihagi and Christina Mwangi, and that the pleadings, filings, trial testimony, jury findings, court rulings and judgments in the *Duncan I* lawsuit speak for themselves, including the date the Complaint was filed.

39. Zorall admits only that Duncan and Mendoza filed a complaint in the *Duncan II* lawsuit and that the pleadings, filings, trial testimony, jury findings, court rulings and judgments in the *Duncan II* lawsuit speak for themselves, and denies any allegation in Paragraph 39 that is inconsistent with the pleadings, filings, trial testimony, jury findings, court rulings and judgments in *Duncan II*.

40. Zorall admits only that the *Duncan I* and *Duncan II* lawsuits (“Duncan Lawsuits”) were consolidated and that the pleadings, filings, trial testimony, jury findings, court rulings and judgments in the Duncan Lawsuits speak for themselves, and denies any allegation in Paragraph 40 that is inconsistent with the pleadings, filings, trial testimony, jury findings, court rulings and judgments in the *Duncan* Lawsuits.

41. Zorall admits only that *Duncan* Lawsuits were tried to a jury, that judgment based on a jury verdict was entered against the Kihagi Defendants in the Duncan Lawsuits, and that the pleadings, filings, trial, testimony, jury findings, court rulings and judgments in the Duncan Lawsuits speak for themselves, and denies any allegation in Paragraph 41 that is inconsistent with the pleadings, filings, trial testimony, jury findings, court rulings and judgments in the *Duncan* Lawsuits. Zorall further admits that Exhibit C to AmGUARD’s TPC is a true and correct copy of a Judgment on Jury Verdict, filed October 17, 2017, which Judgment speaks for itself.

42. Zorall admits only that an amended judgment was entered against the Kihagi Defendants in the Duncan Lawsuits, and that the pleadings, filings, trial testimony, jury findings, court rulings and judgments in the Duncan Lawsuits speak for themselves, and denies any allegation in Paragraph 42 that is inconsistent with the pleadings, filings, trial testimony, jury findings, court rulings and judgments in the *Duncan* Lawsuits.

43. The allegations in paragraph 43 constitute legal conclusions and therefore do not require a response. Without waiving the foregoing objections, Zorall responds: Zorall denies the allegations contained within paragraph 43 of the TPC.

44. Zorall lacks knowledge or information sufficient to form a belief about the truth of as to exactly when Star sent a letter dated July 10, 2010 to AmGUARD and on that basis denies such allegations.

FIRST CAUSE OF ACTION FOR RESCISSION

(Against All Third Party Defendants and Starr)

45. Zorall incorporates by reference its responses to Paragraphs 1 through 44 as if fully set forth herein.

46. The allegations in paragraph 46 constitute legal conclusions and therefore do not require a response. Without waiving the foregoing objections, Zorall responds: Zorall denies the allegations contained within paragraph 46 of the TPC.

47. The allegations in paragraph 47 constitute legal conclusions and therefore do not require a response. Without waiving the foregoing objections, Zorall responds: Zorall denies the allegations contained within paragraph 47 of the TPC.

48. The allegations in paragraph 48 constitute legal conclusions and therefore do not require a response. Without waiving the foregoing objections, Zorall responds: Zorall denies the allegations contained within paragraph 48 of the TPC.

SECOND CAUSE OF ACTION FOR DECLARATORY RELIEF

RE NO COVERAGE UNDER THE POLICY

(Against All Third Party Defendants and Starr)

49. Zorall incorporates by reference its responses to Paragraphs 1 through 48 as if fully set forth herein.

50. The allegations in paragraph 50 constitute legal conclusions and therefore do not require a response. Without waiving the foregoing objections, Zorall responds: Zorall denies the allegations contained within paragraph 50 of the TPC.

51. The allegations in paragraph 51 constitute legal conclusions and therefore do not require a response. Without waiving the foregoing objections, Zorall responds: Zorall

denies the allegations contained within paragraph 51 of the TPC.

52. The allegations in paragraph 52 constitute legal conclusions and therefore do not require a response. Without waiving the foregoing objections, Zorall responds: Zorall denies the allegations contained within paragraph 52 of the TPC.

THIRD CAUSE OF ACTION FOR DECLARATORY RELIEF
RE DUTY TO DEFEND AND INDEMNIFY DUNCAN LAWSUITS

(Against All Third Party Defendants and Starr)

53. Zorall incorporates by reference its responses to Paragraphs 1 through 52 as if fully set forth herein.

54. The allegations in paragraph 54 constitute legal conclusions and therefore do not require a response. Without waiving the foregoing objections, Zorall responds: Zorall denies the allegations contained within paragraph 54 of the TPC.

55. Zorall admits only that the AmGUARD issued a Businessowners' Policy, policy number Z0BP601626 to Zorall LLC for the policy period July 20, 2015 to July 20, 2016, which policy speaks for itself.

56. The allegations in paragraph 56 constitute legal conclusions and therefore do not require a response. Without waiving the foregoing objections, Zorall responds: Zorall denies the allegations contained within paragraph 56 of the TPC.

57. The allegations in paragraph 57 constitute legal conclusions and therefore do not require a response. Without waiving the foregoing objections, Zorall responds: Zorall denies the allegations contained within paragraph 57 of the TPC.

58. The allegations in paragraph 58 constitute legal conclusions and therefore do not require a response. Without waiving the foregoing objections, Zorall responds: Zorall denies the allegations contained within paragraph 58 of the TPC.

59. The allegations in paragraph 59 constitute legal conclusions and therefore do not require a response. Without waiving the foregoing objections, Zorall responds: Zorall denies the allegations contained within paragraph 59 of the TPC.

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FOURTH CAUSE OF ACTION FOR DECLARATORY RELIEF
RE DUTY TO DEFEND AND INDEMNIFY SMYTH LAWSUITS

(Against Kihagi Defendants and Starr)

60. Zorall incorporates by reference its responses to Paragraphs 1 through 59 as if fully set forth herein.

61. The allegations in paragraph 61 constitute legal conclusions and therefore do not require a response. Without waiving the foregoing objections, Zorall responds: Zorall denies the allegations contained within paragraph 61 of the TPC.

62. The allegations in paragraph 62 constitute legal conclusions and therefore do not require a response. Without waiving the foregoing objections, Zorall responds: Zorall denies the allegations contained within paragraph 62 of the TPC.

63. The allegations in paragraph 63 constitute legal conclusions and therefore do not require a response. Without waiving the foregoing objections, Zorall responds: Zorall denies the allegations contained within paragraph 63 of the TPC.

PRAYER FOR RELIEF

1. Zorall denies that AmGUARD is entitled to the relief it seeks as to Starr and further states as follow:

(a) Zorall denies AmGUARD is entitled to any of the requested relief it seeks from Zorall.

(b) Zorall denies AmGUARD is entitled to any of the requested relief it seeks from Zorall.

(c) Zorall denies AmGUARD is entitled to any of the requested relief it seeks from Zorall.

(d) Zorall denies AmGUARD is entitled to any of the requested relief it seeks from Zorall to the extent it is not supported by California law.

(e) Zorall denies AmGUARD is entitled to any of the requested relief it seeks from Zorall.

2. Zorall denies that AmGUARD is entitled to the relief it seeks as to Zorall and

1 further states as follow:

2 (a) Zorall denies AmGUARD is entitled to any of the requested relief it seeks from
3 Zorall.

4 (b) Zorall denies AmGUARD is entitled to any of the requested relief it seeks from
5 Zorall to the extent it is not supported by California law.

6 3. Zorall denies AmGUARD is entitled to any of the requested relief it seeks from
7 Zorall to the extent it is not supported by California law.

8 4. Zorall denies AmGUARD is entitled to any of the requested relief it seeks from
9 Zorall to the extent it is not supported by California law.

10 5. Zorall denies AmGUARD is entitled to any of the requested relief it seeks from
11 Zorall to the extent it is not supported by California law.

12 6. Zorall denies AmGUARD is entitled to any of the requested relief it seeks from
13 Zorall to the extent it is not supported by California law.

14 7. Zorall denies AmGUARD is entitled to any of the requested relief it seeks from
15 Zorall to the extent it is not supported by California law.

16 8. Zorall denies AmGUARD is entitled to any of the requested relief it seeks from
17 Zorall to the extent it is not supported by California law.

18 9. Zorall denies AmGUARD is entitled to any of the requested relief it seeks from
19 Zorall.

20 10. Zorall denies AmGUARD is entitled to any of the requested relief it seeks from
21 Zorall.

22 **GENERAL DENIAL**

23 1. Zorall denies generally, specifically, conjunctively, and disjunctively each
24 and every allegation of each and every paragraph of each and every claim for relief
25 asserted in the Third-Party Complaint/Counterclaim, in its entirety, and denies that
26 AmGUARD sustained any damages in the manner or sums alleged, or at all, by reason of
27 any act, breach, or omission by Zorall, and further denies that AmGUARD is entitled to
28 the relief sought.

SIXTH AFFIRMATIVE DEFENSE

6. Zorall alleges that in each and every cause of action, should AmGUARD recover damages against any defendants, Zorall is entitled to have the amount abated, reduced or eliminated to the extent other third parties' fault caused or contributed to plaintiffs' damages, if any.

SEVENTH AFFIRMATIVE DEFENSE

7. Zorall contends that in each and every cause of action, the sole and/or proximate cause of the damages claimed by AmGUARD was and is due to the wilful and intentional acts of persons and/or entities other than Zorall.

EIGHTH AFFIRMATIVE DEFENSE

8. Zorall alleges that in each and every cause of action, AmGUARD's alleged damages or injuries, if any, were aggravated by its failure to use reasonable diligence to mitigate them.

NINETH AFFIRMATIVE DEFENSE

9. AmGUARD's claims are barred, in whole or in part, because AmGUARD had notice of the Duncan Lawsuits at all relevant times, including prior to October 17, 2017.

TENTH AFFIRMATIVE DEFENSE

10. In each and every cause of action, AmGUARD's alleged duties as claimed in the TPC, if any so existed, have been excused by the doctrine of impossibility in that the performance of said obligation is and has been rendered impossible and/or commercially impracticable.

ELEVENTH AFFIRMATIVE DEFENSE

11. Zorall alleges that in each and every cause of action, AmGUARD is not entitled to the relief sought by reason of its own unclean hands with regard to the matters alleged in the complaint. The TPC and each cause of action therein are barred by the approval and ratification of the actions complained of therein.

TWELFTH AFFIRMATIVE DEFENSE

12. Zorall alleges that in each and every cause of action, assuming arguendo that

1 Zoriall owed any obligation to which full performance has not been rendered, which Zoriall
2 expressly denies, performance of said obligation has been excused by the acts and omissions
3 of AmGUARD or its agents excluding these defendants.

4 **THIRTEENTH AFFIRMATIVE DEFENSE**

5 13. Zoriall alleges that in each and every cause of action, AmGUARD has not
6 been damaged in any sum or sums, or otherwise, or at all, by reason of any act or omission
7 by Zoriall.

8 **FOURTEENTH AFFIRMATIVE DEFENSE**

9 14. Zoriall alleges that in each and every cause of action, Zoriall had legal
10 justification for all of their actions and omissions and therefore the complaint and each and
11 every cause of action therein is barred.

12 **FIFTEENTH AFFIRMATIVE DEFENSE**

13 15. In each and every cause of action, AmGUARD has insufficient evidence to
14 prove that Zoriall had actual knowledge of a serious risk of harm to the AmGUARD, or any
15 persons, and disregarded such knowledge.

16 **SIXTEENTH AFFIRMATIVE DEFENSE**

17 16. Zoriall pleads in each and every cause of action that it was acting without
18 malice in good faith at all relevant times and therefore enjoy good faith immunity from suit.

19 **SEVENTEENTH AFFIRMATIVE DEFENSE**

20 17. AmGUARD's claims are barred, in whole or in part, because AmGUARD was
21 not prejudiced by "late notice", if any, of the *Duncan* Lawsuits.

22 **EIGHTEENTH AFFIRMATIVE DEFENSE**

23 18. As and for an Eighteenth, separate and distinct affirmative defense, Zoriall
24 alleges that in each and every cause of action and at all times mentioned in the TPC,
25 AmGUARD acted in a careless, reckless, wanton and negligent manner in and about the
26 matters set forth in the TPC; that such careless, reckless, wanton and negligent conduct
27 proximately contributed to the injuries and damages, if any, sustained or claimed by
28 plaintiffs; that as a consequence, plaintiffs' claims are barred.

NINETEENTH AFFIRMATIVE DEFENSE

19. AmGUARD's claims are barred, in whole or in part, to the extent that AmGUARD had the opportunity to, but did not, participate in the settlement of the *Smyth* Lawsuits.

TWENTIETH AFFIRMATIVE DEFENSE

20. AmGUARD's claims are barred, in whole or in part, because AmGUARD agreed to defend the *Smyth* Lawsuits.

TWENTY FIRST AFFIRMATIVE DEFENSE

21. AmGUARD's claims are barred, in whole or in part, because AmGUARD agreed to pay attorneys' fees, costs and expenses incurred to defend the *Smyth* Lawsuits.

TWENTY SECOND AFFIRMATIVE DEFENSE

22. AmGUARD's claims are barred, in whole or in part, to the extent that AmGUARD did not timely rescind the AmGUARD Policy.

TWENTY THIRD AFFIRMATIVE DEFENSE

23. Plaintiffs, by the statements, conduct, acts, omissions and acquiescence attributable to them, and each of them, are barred from asserting any of the claims and causes of action contained in the Complaint, insofar as they are in pari delicto to Defendant.

TWENTY FOURTH AFFIRMATIVE DEFENSE

24. The greater weight of the relative equities between the parties to this TPC favors Zorall.

TWENTY FIFTH AFFIRMATIVE DEFENSE

25. If AmGUARD suffered any damages or harm, which is denied, AmGUARD, by the statements, conduct, acts, omissions and acquiescence attributable to them, and each of them, proximately caused and contributed to its own alleged damages or harm, thereby reducing the liability of Zorall, if any, by the comparative fault of AmGUARD.

TWENTY SIXTH AFFIRMATIVE DEFENSE

26. AmGUARD, by the statements, conduct, acts, omissions and acquiescence

1 attributable to it, and each of them, ratified the acts of their agents, employees, subordinates
2 and predecessors in interest, thereby precluding it from seeking any recovery or remedy as
3 alleged in the TPC.

4 **TWENTY SEVENTH AFFIRMATIVE DEFENSE**

5 27. AmGUARD, by the statements, conduct, acts, omissions and acquiescence
6 attributable to them, and each of them, have waived all claims and causes of action and any
7 recovery or remedy as alleged in the TPC.

8 **TWENTY EIGHTH AFFIRMATIVE DEFENSE**

9 28. AmGUARD, by the statements, conduct, acts, omissions and acquiescence
10 attributable to them, and each of them, are estopped from seeking any recovery or remedy
11 as alleged in the TPC.

12 **TWENTY NINTH AFFIRMATIVE DEFENSE**

13 29. Plaintiffs failed to join all necessary parties.

14 **THIRTIETH AFFIRMATIVE DEFENSE**

15 30. AmGUARD's claims are barred, in whole or in part, to the extent that the
16 doctrine of laches applies.

17 **THIRTIETH AFFIRMATIVE DEFENSE**

18 31. AmGUARD's claims are barred, in whole or in part, to the extent that the
19 doctrine of estoppel applies.

20 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

21 32. AmGUARD's claims are barred, in whole or in part, to the extent the claims
22 are prohibited, limited, or regulated by applicable California law, statute and/or public
23 policy.

24 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

25 33. AmGUARD's claims are barred, in whole or in part, to the extent that
26 AmGUARD's TPC, and each alleged cause of action therein, is vague, ambiguous, and
27 uncertain.

28 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

1 34. AmGUARD's claims are barred, in whole or in part, because AmGUARD
2 had notice of the Smyth Lawsuits at all relevant times.

3 **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

4 35. Zorall presently has insufficient knowledge or information on which to form
5 a belief as to whether it has additional, as yet unstated, affirmative defenses available, and
6 thus Starr reserves the right to assert additional affirmative defenses as the factual basis for
7 AmGUARD's claims becomes known.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Zorall respectfully pray for relief as hereinafter set forth:

- 10 1. That all relief requested in the TPC be denied with prejudice;
11 2. That AmGUARD take nothing by its action;
12 3. That judgment be entered in Zorall's favor;
13 4. That Zorall be awarded all costs of suit, including reasonable attorneys' fees; and
14 5. Such further and other relief as the Court deems just and proper.

15 Dated: September 30, 2020

NT Law

16 /s/ Julie N. Nong

17 _____
18 Julie N. Nong
19 Attorneys for Defendants ZORIALLL LLC,
20 ANNE KIHAGI and CHRISTINA MWANGI
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